

In the Matter of Merchant Mariner's Document No. Z-357012 and all
other Seaman Documents
Issued to: Donald C. Nelson

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1371

Donald C. Nelson

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 28 September 1962, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended Appellant's seaman documents upon finding him guilty of misconduct.

Appellant was charged with four specifications, three of which were found proved by the Examiner. Two of these three specifications deal with Appellant's alleged failure to perform his duties. The third specification accuses Appellant of addressing abusive language to the Third Officer. Appellant pleaded not guilty to each specification. The Investigating Officer introduced into evidence entries in the Official Logbook and the Shipping Articles of the SS FRANCES. He then rested his case. Appellant, who chose to act as his own counsel, then took the stand and testified.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the three specifications and the charge had been proved. The other specification was dismissed by the Examiner because of insufficient evidence. The Examiner then entered an order suspending Appellant's document for a period of two months outright with an additional two months on twelve months' probation.

FINDINGS OF FACT

Appellant was serving as an able seaman on board the United States SS FRANCES and acting under the authority of his document between 28 June and 16 September 1962.

On 13 July, Appellant failed to stand his 0800 to 1200 watch at sea.

On 5 August, Appellant became too intoxicated while ashore to

assist in securing for sea and undocking the vessel in the port of Bandar Shahpur, Iran.

On 4 September, the Third Officer ordered Appellant to leave the bridge when he reported for his wheel watch in an intoxicated condition. Appellant then addressed the Third Officer with abusive language.

Appellant's prior record consists of a suspension in 1959 for offenses similar to these.

BASES OF APPEAL

Appellant argues that "there is still misunderstanding on the third and fourth specifications * * *." The third specification deals with Appellant's failure to perform his duties while the SS FRANCES was at Bandar Shahpur, Iran. The fourth specification charges Appellant with addressing abusive language to the Third Officer.

OPINION

The entry in the Official Logbook states that, on 5 August 1962, Appellant failed to turn to, to secure for sea and undock. In answer to this log entry, Appellant replied, "true". At the hearing, Appellant verified that he did not work on that day. He explained the latter statement by testifying that at the time in question he was extremely intoxicated and could not perform his duties. It appears from the record that Appellant had knowledge that the vessel would sail in the evening of the day on which he became intoxicated. The Government sustained its burden of proof as there was no excuse for Appellant to become incapacitated to perform his duties.

As concerns the fourth specification, the entry in the Official Logbook states that Appellant, on 4 September 1962, reported to the bridge to stand his wheel watch under the influence of alcohol and, after being ordered from the bridge, started to use abusive language. Appellant admitted addressing the Third Officer with abusive language, but said he did so because he considered that this officer was improperly ordering Appellant from the bridge. Regardless of the circumstances, there was no justification for the use of such language to a ship's licensed officer by an able seaman. Appellant's conduct showed a flagrant lack of respect for his superior officer.

ORDER

The appeal is dismissed and the Order of the Examiner dated 28

September 1962 at New Orleans, Louisiana, is AFFIRMED.

D. McG. Morrison
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D.C., this 1st day of March 1963.